

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Gordon	Team: Team # 4	CCRB Case #: 200613946	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 10/14/2006 5:30 PM	Location of Incident: § 87(2)(b) and the 79th Precinct stationhouse	Precinct: 79	18 Mo. SOL 4/14/2008	EO SOL 4/14/2008	
Date/Time CV Reported Sat, 10/14/2006 6:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/19/2006 2:03 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andy Scantlebury	03699	937500	079 PCT
2. POM Clifford Louis	06651	927098	079 PCT
3. POM Maurice Fyffe	27871	936629	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Dudley	29468	918982	079 PCT
2. POM Arnold Chow	27983	921211	079 PCT
3. POM Michael Delvalle	06206	936463	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Clifford Louis	Force: PO Clifford Louis used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.	
B.POM Andy Scantlebury	Force: PO Andy Scantlebury used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.	
C.POM Maurice Fyffe	Force: PO Maurice Fyffe used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.	
D.POM Andy Scantlebury	Force: PO Andy Scantlebury used pepper spray against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.	
E.POM Clifford Louis	Force: PO Clifford Louis used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.	
F.POM Clifford Louis	Discourtesy: PO Clifford Louis spoke obscenely to § 87(2)(b) in front of § 87(2)(b) in Brooklyn.	
G.POM Maurice Fyffe	Abuse: PO Maurice Fyffe strip-searched § 87(2)(b) at the 79th Precinct stationhouse.	

### Synopsis

On October 14, 2006, at approximately 5:30 PM, § 87(2)(b) was standing near the entrance of § 87(2)(b) the building he lives in with his mother in Brooklyn. He was with two unidentified males. A marked patrol car then pulled up and PO Andy Scantlebury, PO Clifford Louis and PO Maurice Fyffe exited. They approached the three males and asked them to see ID. § 87(2)(b) showed his ID to the officers but kept it in his wallet. PO Clifford Louis then asked to see the ID outside of the wallet because he could not see it as § 87(2)(b) had initially showed it. § 87(2)(b) became annoyed and decided to go inside of § 87(2)(b). PO Louis then told § 87(2)(b) to stop and that he was under arrest. § 87(2)(b) ignored him and continued into the building. PO Louis then followed § 87(2)(b) and grabbed him by the hood of his sweatshirt, but § 87(2)(b) pulled away. Then PO Louis pushed § 87(2)(b) against the wall and tried to get § 87(2)(b)'s hands behind his back, wrestling with § 87(2)(b) while § 87(2)(b) resisted being restrained (**Allegation A**). PO Scantlebury and PO Fyffe then followed PO Louis into the building. While PO Louis was trying to restrain § 87(2)(b) PO Scantlebury and PO Fyffe were punching § 87(2)(b) in the ribs (**Allegations B & C**). During the struggle, PO Scantlebury used pepper spray on § 87(2)(b) (**Allegation D**). PO Scantlebury then called for back up because of a crowd forming outside and § 87(2)(b) was then finally handcuffed. After the struggle, PO Louis also elbowed § 87(2)(b) twice in the side (**Allegation E**). § 87(2)(b) was then taken to the officers' patrol car whereupon PO Louis told § 87(2)(b) "Fuck your mother" (**Allegation F**). He was taken to the 79<sup>th</sup> Precinct stationhouse where PO Fyffe conducted a strip-search that included removing § 87(2)(b)'s pants, shoes and shirt so that § 87(2)(b) was only in underwear, a tank top and socks (**Allegation G**).

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b)

This complaint was first called into IAB by § 87(2)(b)'s sister, § 87(2)(b) –who did not witness the incident – on October 14, 2006 (see enclosures 4a-4d). This case was then referred to the CCRB where it was received on October 19, 2006 (see enclosures 5a-5b). The victim, § 87(2)(b) was first contacted on October 30, 2006, whereupon he provided a phone statement (see enclosure 6c). § 87(2)(b) was then interviewed at the CCRB on November 3, 2006 (see enclosures 6d-6e). § 87(2)(g)

On October 14, 2006, at approximately 5:30PM, § 87(2)(b) was in front of his apartment building at § 87(2)(b) in Brooklyn with two unidentified males. § 87(2)(b) refused to provide their names because they did not want to get involved in the investigation. § 87(2)(b) was at the top of the steps standing in the doorway while the two unidentified males were on the bottom steps. A marked patrol car

pulled up with two officers in the front: PO Andy Scantlebury and PO Maurice Fyffe (identified as such through their shield numbers and their own CCRB statements), and one officer in the back: PO Clifford Louis (identified in the same manner). PO Scantlebury and PO Fyffe exited the car and approached § 87(2)(b) and his friends, asking if any of them had identification. § 87(2)(b) said he lived there and showed PO Scantlebury his ID by flipping out a windowed flap from his wallet containing his New York State Driver License (see enclosure 6g). He then started talking to the officers when they requested to see his ID again. At which point, PO Louis exited the back seat of the car and approached while ordering § 87(2)(b) to take the ID out of the wallet. § 87(2)(b) grew annoyed at this point because he said the officers had already seen his ID and already knew that he lived at the above location. He felt like he was being harassed and, instead of taking his ID out of his wallet, he turned around and walked into the building to go to his apartment.

PO Louis followed § 87(2)(b) into the building. Once § 87(2)(b) had gotten ten steps inside the hallway of his building, in front of his apartment door, PO Louis grabbed § 87(2)(b) by the hood of his sweatshirt. § 87(2)(b) asked “What are you doing? I already showed you my ID!” and tried to escape PO Louis’ grip. They began to “tussle” whereupon PO Louis tried to get § 87(2)(b)’s hands behind his back, pushed § 87(2)(b) against the wall, tried to put his knee into § 87(2)(b)’s crotch and then tried to trip § 87(2)(b). § 87(2)(b) resisted PO Louis’ advances. At this point, § 87(2)(b) realized that he was being arrested.

PO Scantlebury and PO Fyffe then came into the building. While § 87(2)(b) was doubled over for a reason he did not clarify, PO Scantlebury and PO Fyffe punched § 87(2)(b) on both sides of his ribs a total of three to four times. Additionally, PO Scantlebury began to “mace” § 87(2)(b) while he was doubled over and being hit in the ribs. § 87(2)(b) never kicked, punched or pushed the officers but he did resist the officers trying to put him on the ground and put him in handcuffs by moving his body out of their grip and using his forearms to move their arms away from him.

When PO Scantlebury stopped using the pepper spray in the hallway, § 87(2)(b) stood up straight and tried to make his way outside of the building while PO Fyffe and PO Louis were still holding on to him. He got outside and, with one hand, grabbed onto a gate outside of the door while an officer was still holding onto him. At this point the officers handcuffed § 87(2)(b) and brought him back into the building where they put him face first against the wall and began to search him. PO Louis then elbowed § 87(2)(b) in the ribs.

The officers then took § 87(2)(b) outside where he noticed that approximately eight to ten police cars had arrived on the scene. He believed they arrived because § 87(2)(b)’s family members had called the police when they saw what the officers were doing to § 87(2)(b). § 87(2)(b) could not recall any of the officers using their radios to call for backup. § 87(2)(b) was taken to the police car in which the first three officers showed up. When in the back seat, PO Louis said something to the effect of “Fuck your mother” and elbowed § 87(2)(b) in the ribs again.

The officers took § 87(2)(b) to the 79<sup>th</sup> Precinct stationhouse where an officer, identified as PO Fyffe through the officers own CCRB statement, removed § 87(2)(b)’s clothing down to his tank top, underwear and socks and he was searched. EMS arrived and a female EMT took a statement from § 87(2)(b) at which time he told the EMT, “I was hit.” He also told the EMT that police officers punched him in the face while he resisted arrest; a detail he did not mention in any of his statements to the CCRB (see enclosure 6a). § 87(2)(b) did not go to the hospital that day. He was taken to central booking and “let out the side door,” meaning he did not see a judge.

The incident transpired for approximately 45 minutes. § 87(2)(b)’s mother, § 87(2)(b) came out of the apartment sometime during the incident but § 87(2)(b) could not remember exactly when she came out. After § 87(2)(b) was handcuffed, his mother took down the officers’ shield numbers on a sheet of paper. On October 16, 2006 § 87(2)(b) went to § 87(2)(b) in Brooklyn. He was suffering from a migraine headache as well as bruising and pain in his back and shoulders. His chief complaint was that he was punched and kicked by police officers; the latter of which was also not mentioned in any of his CCRB statements (see enclosure 6b).

In his arrest photos, § 87(2)(b) did not appear to have sustained any injury to his face and there is no sign of blood (see enclosure 19a).

### Results of Investigation

§ 87(2)(b)

§ 87(2)(b) first gave details of this incident when her daughter, § 87(2)(b) called IAB to report it for the first time on October 14, 2006 (see enclosures 4a-4d). § 87(2)(b) was then contacted by the CCRB on November 20, 2006 whereupon she provided a brief telephone statement (see enclosure 7b). § 87(2)(b) was then interviewed at the CCRB on November 30, 2006 (see enclosures 7c-7d). All of her statements were mostly consistent, but any discrepancies will be noted.

On October 14, 2006 at approximately 5:30 PM, § 87(2)(b)'s mother, § 87(2)(b) was inside of her apartment at § 87(2)(b). She heard her doorbell ring continuously like "something was wrong." She went out to see what was going on and directly outside of her door she saw two officers, PO Andy Scantlebury and PO Clifford Louis (identified through their shield numbers, police documents and their own CCRB statements), and her son inside of the vestibule. The vestibule is a small 4' x 8' antechamber just to the right of § 87(2)(b)'s apartment door. There are two doors on either side of the vestibule: one leading outside to the front of the building and one that leads to the entrance hallway of the apartment building. The door leading from the vestibule to the hallway has a glass window in it but is generally open most of the time (as it was at the time of the incident) because the door has no lock or doorknob. Inside the vestibule, PO Scantlebury and PO Louis were kicking, punching and pepper spraying § 87(2)(b) who was hunched down against the wall trying to protect his body with his arms and legs. Meanwhile, the officers were also holding onto § 87(2)(b) by his arms and his neck.

Throughout the incident, § 87(2)(b) did not hear the officers say anything to § 87(2)(b) and only heard § 87(2)(b) say something to the effect of "Mom, look what they are doing to me." § 87(2)(b) noticed that there was a third officer (later identified through investigation and the officers' own CCRB statements as PO Maurice Fyffe) standing just outside of the door leading to the outside of the building. This officer did not get involved in the scuffle and stood near a gate by the door.

§ 87(2)(b) could not recall how many times the officers kicked and punched § 87(2)(b) but could recall that both PO Scantlebury and PO Louis were punching § 87(2)(b) in the head and the face and both were kicking him in the legs and back. Additionally, the officers attempted to kick § 87(2)(b) in the groin. It was only PO Scantlebury who pepper sprayed § 87(2)(b) he did this at least two times. § 87(2)(b) at first did not think the two men were police officers and she tried to pull them off of her son saying, "Stop, stop, stop," yet they continued to punch, kick and pepper spray § 87(2)(b). This went on for about 10 to 15 minutes until PO Scantlebury said that they needed to call for back up.

At this point, § 87(2)(b) asked what was going on and PO Louis announced that § 87(2)(b) was under arrest and that he was going to be taken to the Precinct stationhouse. PO Louis further told § 87(2)(b) that § 87(2)(b) was being arrested for trespassing, loitering and obstruction of governmental administration. § 87(2)(b) then noticed a wallet on the floor of the vestibule. She picked it up, looked inside and saw that it was § 87(2)(b)'s because his New York State Driver License was inside. While waiting for back up, the officers, still inside the vestibule, handcuffed § 87(2)(b) then went outside and noticed that a crowd of about 25 to 30 people were at the scene and she could hear people saying, "He showed his ID" and "Get the badge numbers." Five minutes after back up was called, about 8 to 12 patrol cars showed up at the scene, including "jeeps and undercover" patrol cars. Additionally, when back up came, officers blocked off the streets surrounding the area: Albany Avenue, Fulton Street and Decatur Street.

As back up officers began to arrive, § 87(2)(b) went into her house to get a piece of paper to write down some of the officers' shield numbers. She wrote down the following numbers: 29468, 3699, 27871, and 6651 (see enclosure 7a). These shield numbers correspond to the following officers respectively: PO James Dudley, PO Andy Scantlebury, PO Maurice Fyffe, and PO Clifford Louis. PO Scantlebury and PO

Louis then took § 87(2)(b) to a marked patrol car and both got in the back with him and § 87(2)(b) was taken to the stationhouse.

In her statement to IAB, § 87(2)(b) said that § 87(2)(b) was bleeding from the nose and mouth after the incident § 87(2)(g).

#### *Witnesses Not Interviewed*

§ 87(2)(b) said that he was with two other males during this incident. However, § 87(2)(b) would not provide their names or contact information at any point during this investigation and indicated that they were not interested in getting involved with the matter. Therefore, these two individuals could not be interviewed.

§ 87(2)(b) and § 87(2)(b) also claimed that a crowd began to form during the incident. § 87(2)(b) and § 87(2)(b) were not able to provide any information with which to identify any of these individuals and furthermore, since it is clear that this incident took place inside of the building, it is not likely that any of these individuals would have seen the alleged misconduct. Furthermore, none of the officers interviewed for this investigation indicated that any other individuals other than § 87(2)(b) were stopped and questioned during this incident and so UF-250 reports were not requested. Therefore, none of the individuals in this crowd were identified or interviewed.

#### **Officer Statements**

##### *Officer Identifications*

Police Officers Scantlebury, Louis, Fyffe and Dudley were originally identified because § 87(2)(b) took down their shield numbers on a sheet of paper at the scene of the incident. PO Arnold Chow and PO Michael Delvalle were identified through the sprint print-out and the roll call. All of the officers confirmed their rolls in the incident in their subsequent CCRB statements.

##### *PO Clifford Louis and PO Andy Scantlebury*

Since these officers were the only two officers inside of the building struggling with § 87(2)(b) their statements were combined.

PO Scantlebury's Memo book (see enclosures 10a-10b): 10/14/06: 1740 – 1 under § 87(2)(b) § 87(2)(b) Assault, OGA, Resisting Arrest, Discon.

PO Louis' Memo book (see enclosures 8a-8c): 10/14/06: 1730 – 3 males in front of 18 Albany. 1740 – 1 under in regards. 1750 – 10-62A (Out of service – mechanical). 1840 – 10-61 (Precinct assignment) to Methodist Hospital.

PO Louis was interviewed at the CCRB on December 14, 2006 (see enclosures 8d-8e) and PO Scantlebury was interviewed on December 28, 2006 (see enclosures 10k-10l). On October 14, 2006, PO Scantlebury and PO Louis were assigned to a 3:00 PM to 11:35 PM tour alongside PO Maurice Fyffe. The officers had an auto robbery assignment. All the officers were in uniform and assigned to the same marked patrol car.

On October 14, 2006, at approximately 5:30 PM, PO Scantlebury, along with PO Louis and PO Fyffe, observed three males outside the entrance of an "F-TAP" building (that is, a building under the Formal Trespass Affidavit Program, which allows officers to investigate for signs of trespassing individuals at any time). One of them, § 87(2)(b) was standing in the doorway and the officers observed that a woman had to squeeze past him to enter the building. They went to investigate the possibility that the individuals were trespassing. The officers approached and asked the three males if any of them lived there and then asked them for their IDs. Two of the males said that § 87(2)(b) lived there. § 87(2)(b) pulled out his wallet and "flipped" his ID out to show the officers and then put it back. § 87(2)(b) was standing in the doorway and the officers were standing down on the sidewalk, there was a distance of about 15 feet

between them. The officers could not see the ID that § 87(2)(b) presented and so PO Louis asked to see the ID again and § 87(2)(b) flipped it out again in the same manner as before. The officers still could not see the ID clearly and PO Louis once more requested to see the ID. § 87(2)(b) then became “loud” and “boisterous” and began to use obscenities, saying things to the effect of “Fuck this shit” and “I am not going through this,” PO Scantlebury later noted § 87(2)(b)’s demeanor and statements to the officers in a complaint report (see enclosures 10c-10d). PO Louis then told § 87(2)(b) that he was under arrest for disorderly conduct and § 87(2)(b) then ran inside the building. PO Louis went in after § 87(2)(b) and PO Scantlebury followed behind PO Louis. PO Fyffe stayed outside of the building to keep § 87(2)(b)’s friends “out of the situation.”

Directly inside the building’s “breezeway,” which stands between the outside of the building and the inner hallway of the building, PO Louis grabbed § 87(2)(b) by his upper body. § 87(2)(b) swung and flailed his arms at PO Louis, hitting PO Louis in the upper body. § 87(2)(b) then began flailing his arms, moving about and pushing his body against the officers to avoid being subdued and arrested. Meanwhile, PO Louis and PO Scantlebury were trying to grab onto § 87(2)(b)’s upper body and get his arms behind his back so as to handcuff him. PO Louis told § 87(2)(b) to stop resisting. In the struggle, as § 87(2)(b) was flailing and swinging his arms he came into contact within the area of PO Louis’ right hand and by this PO Louis sustained injury to his right thumb. § 87(2)(b) never hit PO Scantlebury in the scuffle. PO Scantlebury then grabbed onto § 87(2)(b) and pulled him towards the outside of the building while PO Louis was behind § 87(2)(b) pushing him towards the outside of the building. PO Scantlebury wanted to take § 87(2)(b) outside because the “breezeway” was too small. The officers got § 87(2)(b) outside of the building and PO Scantlebury pulled out his can of OC spray so that § 87(2)(b) could see it. At this point § 87(2)(b) stopped resisting and PO Scantlebury and PO Louis were able to handcuff him. After § 87(2)(b) was handcuffed, PO Scantlebury noticed a lady come out of the building, but he could not recall anything specific about this female. The incident inside of the building lasted about two to ten minutes. Throughout the entire struggle, PO Fyffe remained outside of the building to keep people from coming inside the building.

During the scuffle, before § 87(2)(b) was compliant, PO Scantlebury called for back up because of the crowd that had formed outside. The crowd consisted of about 20 to 30 people. The crowd was curious, upset and “hostile,” saying, “He didn’t do anything.” PO Louis estimated that about 10 to 15 officers from the 79<sup>th</sup> Precinct then showed up to perform crowd control.

The officers then took § 87(2)(b) to the 79<sup>th</sup> Precinct stationhouse. PO Scantlebury could not recall § 87(2)(b) having any injuries and § 87(2)(b) never requested EMS services or complained of pain but the officers decided to call EMS to the stationhouse; they did not explain why. EMS arrived and examined § 87(2)(b) but § 87(2)(b) refused medical attention. PO Scantlebury then completed the relevant paper work and eventually fingerprinted § 87(2)(b). Meanwhile, PO Louis went to § 87(2)(b) Hospital to have his injury attended to.

PO Scantlebury and PO Louis both denied punching, kicking or kneeing § 87(2)(b) or seeing any of the other officers punch, kick or knee § 87(2)(b) at any point. PO Scantlebury did not use his pepper spray, neither did PO Louis. PO Scantlebury stated that only PO Louis was talking to § 87(2)(b) inside of the vehicle as they were driving to the stationhouse and he never said anything to the effect of “Fuck your mother” to § 87(2)(b). PO Louis also denied making this statement. PO Scantlebury and PO Louis did not see any officer strip-search § 87(2)(b) at the stationhouse because PO Scantlebury was doing the paper work and PO Louis left the stationhouse to go to the hospital.

Later, in an Aided report and witness’ statement for an injury to a member of the department, PO Scantlebury stated that § 87(2)(b) struck PO Louis “on the right hand and wrist, causing substantial pain and swelling.” In a Line of Duty report, PO Scantlebury stated that PO Louis had his right hand and wrist “bent awkwardly” (see enclosures 10g-10j). PO Scantlebury also summarized this injury in the complaint report.

*PO Maurice Fyffe*

Memo book (see enclosures 9a-9c): 10/14/06: 1740 – 1 under at § 87(2)(b)

PO Fyffe was interviewed at the CCRB on December 21, 2006 (see enclosures 9d-9e). On October 14, 2006, PO Fyffe along with PO Scantlebury and PO Louis noticed 3 males sitting in front of “an F-TAP location” with a “No Trespassing” sign posted. The officers approached them and asked to see ID. Two of the males said they were there with the third male, § 87(2)(b) who lived there. § 87(2)(b) “flashed” his ID still inside the wallet but PO Fyffe could not see it. PO Louis requested to see it again and that is when § 87(2)(b) screamed, “I am not going to go through this shit” and turned around to go inside the building. At this point people began to come outside to see what was going on. PO Louis went inside the hallway of the building to stop § 87(2)(b) and PO Scantlebury followed him. PO Fyffe stayed right outside of the building to keep the other two males who were with § 87(2)(b) from going inside.

Inside the building, PO Scantlebury and PO Louis were trying to put § 87(2)(b) in handcuffs and PO Fyffe had his back to the door so he could only hear the incident and not see it because he was focusing his attention on the two males outside. He says he heard “a lot of movement” while PO Louis was saying “You’re under arrest, stop moving.” To his knowledge, § 87(2)(b) never assaulted or hit either of the officers inside the building. § 87(2)(b) then struggled outside of the building and was flailing his arms and moving his body in order to avoid being put in handcuffs while PO Louis was holding onto him. At this point PO Fyffe handcuffed § 87(2)(b). The entire incident lasted about five to eight minutes. During the struggle to arrest § 87(2)(b) PO Louis sprained his hand but PO Fyffe could not say exactly when or exactly how. Once § 87(2)(b) was handcuffed, the officers put him in the patrol car with PO Louis getting in the back seat with § 87(2)(b) and they drove to the 79<sup>th</sup> Precinct stationhouse. During the scuffle inside the hallway, a crowd of about 30 people had formed outside and this is why PO Scantlebury called for back up, to which three other patrol vehicles responded.

When they arrived at the stationhouse, PO Fyffe alone conducted a search of § 87(2)(b) which consisted of removing § 87(2)(b)’s pants, shoes and socks. PO Fyffe stated that this was a normal search and so did not have to request permission from a supervisor to conduct the search. EMTs then arrived and § 87(2)(b) told them “My jaw hurts, my leg hurts, my back hurts, my dick hurts,” although the ACR does not contain this statement. Then § 87(2)(b) turned to PO Fyffe and said “Yeah I’m lying, I’m a beast, I’m not going to central booking for the weekend, I’d rather be in the hospital.” PO Fyffe could not provide any further context for this statement. § 87(2)(b) was not taken to the hospital but PO Fyffe did not know why because took PO Louis to the hospital while § 87(2)(b) was still with the EMTs.

At no point during the incident did PO Fyffe or any of the other officers punch, kick or knee § 87(2)(b). PO Fyffe never saw, smelled or heard about the use of pepper spray. PO Fyffe did not hear any of the officers say to § 87(2)(b) “Fuck your mother.”

*PO James Dudley*

Memo book (see enclosures 11a-11c): PO James Dudley made no memo book entries about this incident because he was the last unit to arrive on the scene and the situation was already controlled.

PO Dudley was interviewed on January 17, 2007 (see enclosures 11d-11e). On October 14, 2006, PO Dudley was assigned to sectors M, N and P during a 3:00 PM to 11:35 PM tour. He was assigned to work with PO Peter Russo. He was in uniform and assigned to a marked patrol car.

On October 14, 2006, at approximately 5:30 PM, PO Dudley and PO Russo were the last officers to arrive at § 87(2)(b) after the officers who were arresting § 87(2)(b) put out a call for assistance. When PO Dudley reached the scene, there were a few patrol cars but he could not be sure how many. There were also about “30 or more” people crowded around the area. They were not acting violently but they were inquiring as to why the officers were there. PO Dudley then saw PO Clifford Louis standing outside of a patrol car. PO Dudley asked PO Louis if he was ok and if he already had “the perp” and PO Louis said that he was okay and that he did have the perpetrator. PO Dudley then suggested to PO Louis

that all of the officers leave, concerned that if they stayed at the scene any longer, the crowd would become violent. PO Dudley then got into his patrol car and left the scene to continue his patrol duties.

PO Dudley did not receive any information from any of the officers about the incident either at the scene or later on. PO Dudley did not smell pepper spray while he was at the scene. PO Dudley never saw § 87(2)(b) at the scene of the incident.

#### *PO Michael Delvalle and PO Arnold Chow*

PO Delvalle's Memo book (see enclosures 12a-12b): 10/14/06: 1740 – 10-85 (officers need assistance) 79<sup>th</sup> Robbery Auto 18 Albany.

PO Chow's Memo book (see enclosures 13a-13b): 10/14/06: 1735 – 85 (officers in need of assistance) 79 impact (which indicates an area that is a "hot spot" for crime) § 87(2)(b) 1740 – 98 on Post (call for 10-85 cancelled). 1750 – Car stopped within Atlantic/New York Ave.

PO Michael Delvalle was interviewed at the CCRB on January 31, 2007 (see enclosures 12c-12d). On October 14, 2006, PO Delvalle was working in sector G with PO Danny Hernandez. He worked a tour of 3:00 PM to 11:35 PM, was in full uniform and was assigned to marked RMP #1554.

PO Arnold Chow was interviewed at the CCRB on February 6, 2007 (see enclosures 13c-13d). On October 14, 2006 PO Chow was assigned to sectors A, B and C. His partner for the day was PO Charles Choi. His tour lasted from 3:00 PM to 11:35 PM. He was in uniform and was assigned to marked RMP #2678.

Both PO Delvalle and PO Chow received a call for officers in need of back up at § 87(2)(b) at around 5:35 PM. However, none of these officers witnessed the alleged misconduct because while en route to the scene of the incident the call for officers in need of assistance was cancelled and so the officers never arrived at the scene of the incident.

#### *Officers Not Interviewed*

All of the civilians and officers stated that a large number of officers were called to the scene of the incident. Although, by all accounts, these officers did not arrive at the scene until after § 87(2)(b) was handcuffed and the incident of complaint was over. It is clear that they were called to conduct crowd control and not to help with the arrest of § 87(2)(b). As such, they would not have seen anything inside of the vestibule and so their statements would not have changed the recommended dispositions of this investigation.

#### **Medical Documents**

##### *Ambulance Call Report*

An EMT was sent to the 79<sup>th</sup> Precinct stationhouse at 263 Tompkins Avenue in Brooklyn at approximately 7:06 PM on October 14, 2006. There, § 87(2)(b) complained that he was hit and punched in the face by police while he resisted arrest and that he had pain in the face and shoulders. The EMT did not find any signs of injury and all of § 87(2)(b)'s basic functions were normal; § 87(2)(b) refused medical attention (see enclosures 15a-15b).

##### *Medical Records from § 87(2)(b) Hospital*

On § 87(2)(b), § 87(2)(b) admitted himself to § 87(2)(b) Hospital complaining of body aches and shoulder pains because of being punched and kicked by police officers on October 14, 2006. He also complained of being "maced," which caused irritation to his eyes. A physical examination was not able to determine any outstanding injuries or abnormalities except for a scar on § 87(2)(b)'s mid abdomen and a scratch on his right thigh. The diagnosis was "musculoskeletal pain/contusion." § 87(2)(b) was given a



prescription for 400 mg of Motrin and advised to take “warm soaks.” He was released the same day (see enclosure 14).

### **Police Department Documents**

#### *Sprint Print-Out*

The sprint print-out reflects that the first units to arrive at the incident location in response to a radio communication consisted of a sergeant from the 77<sup>th</sup> Precinct and the officers assigned to sector A from the 77<sup>th</sup> Precinct. They both arrived at 5:37 PM. They then continued patrol at 5:38 PM. The arrest of § 87(2)(b) was then sent over the radio at 5:39 PM (see enclosures 16a-16c).

#### *Command Log*

The command log noted the arrest for § 87(2)(b) but nowhere did it indicate that there was a supervisor’s approval for the strip search that PO Fyffe conducted. His physical and mental condition was noted as normal (see enclosures 18a-18e).

#### *Vouchers*

The vouchers indicate that § 87(2)(b) was in possession of the following items at the time of his arrest: 113 US currency, keys on a black key chain with a light, key on a key ring, cell phone with battery, lip balm, and a purple lighter (see enclosures 19b-19c).

#### *AIDED Report*

This report indicates that PO Louis was removed to § 87(2)(b) Hospital to seek treatment for an injury received on duty in front of § 87(2)(b) (see enclosures 10h-10i).

#### *Online Line Booking System Arrest Report*

§ 87(2)(b) was charged with the following: assault with intent to cause serious physical injury, obstructing governmental administration in the second degree, resisting arrest and disorderly conduct consisting of fighting/violent behavior. The details section reports that § 87(2)(b) was loitering in front of § 87(2)(b) where there is a “No Loitering/No Trespassing” sign. § 87(2)(b) was asked for ID but he refused and then tried to run into the building. The arresting officer grabbed § 87(2)(b) and § 87(2)(b) “swung away” at an assisting officer, causing injury to that officer’s right thumb. The arresting officer attempted to place § 87(2)(b) in handcuffs, at which point § 87(2)(b) began to wrestle the arresting officer to keep from being handcuffed. § 87(2)(b) was quoted in the report as having said “Get off me, I’m not showing you nothing.” (see enclosures 10e-10f).

§ 87(2)(c)

§ 87(2)(c)

§ 87(2)(c)

### **Complainant’s CCRB History**

§ 87(2)(b)

§ 87(2)(b)

## Officers' CCRB History

PO Clifford Louis has been with the NYPD for six years and has not been the subject officer of any substantiated CCRB allegations (see enclosure 2a).

PO Andy Scantlebury and PO Maurice Fyffe have both been with the NYPD for two years and have not been the subject officers of any substantiated CCRB allegations (see enclosure 2b-2c).

## Conclusions and Recommendations

### Undisputed Facts

§ 87(2)(b) was in front of § 87(2)(b) with two unidentified males. § 87(2)(b) was specifically standing in the doorway to the building when he was stopped by Police Officers Andy Scantlebury, Clifford Louis and Maurice Fyffe. The officers asked him for his ID and he showed it but did not take it out of his wallet. PO Louis asked for § 87(2)(b) to take it out of the wallet so that the officers could see it better but § 87(2)(b) did not take it out of the wallet and instead went inside of § 87(2)(b). PO Louis then followed § 87(2)(b) to stop him and PO Scantlebury followed after PO Louis. PO Louis grabbed § 87(2)(b) and § 87(2)(b) struggled to get out of PO Louis' grip. PO Scantlebury then attempted to help PO Louis subdue § 87(2)(b) but § 87(2)(b) continued to resist the officers. At some point during the struggle, PO Louis sustained an injury to his right hand. The whole time PO Fyffe was outside of the front door at § 87(2)(b) keeping individuals from going inside the building. § 87(2)(b) was eventually handcuffed and PO Scantlebury called for back up because a large crowd of between 20 to 30 people had formed outside of § 87(2)(b). Several back up units arrived after § 87(2)(b) was handcuffed and PO Scantlebury, PO Louis and PO Fyffe transported § 87(2)(b) to the 79<sup>th</sup> Precinct stationhouse. At the stationhouse, § 87(2)(b) saw an EMT but refused medical attention. PO Fyffe also conducted a strip search of § 87(2)(b) by removing § 87(2)(b)'s pants and shoes.

### Facts in Dispute

It is not certain: whether PO Scantlebury or PO Louis punched, kicked or elbowed § 87(2)(b) while struggling to arrest him; whether PO Scantlebury used pepper spray on § 87(2)(b) during the struggle and whether PO Louis told § 87(2)(b) "Fuck your mother."

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

## Analysis of Allegations

### *Allegations not Pleaded*

By the accounts of PO Scantlebury and PO Louis, § 87(2)(b) was observed blocking pedestrian traffic into § 87(2)(b) and § 87(2)(b) admitted to standing in the doorway to the building when the officers arrived. By that, § 87(2)(b) was committing a violation of penal law 240.20 subsection 5, disorderly conduct: blocking pedestrian traffic. In which case, the officers were justified in stopping him and therefore the stop will not be pleaded.

Finally, § 87(2)(b) claimed to have been searched after being handcuffed. Though, it was a search incident to a lawful arrest since § 87(2)(b) was admittedly resisting the officers. Therefore, the search has not been pleaded.

**Allegation A: Force: PO Clifford Louis used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.**

**Allegation B: Force: PO Andy Scantlebury used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn**

After § 87(2)(b) said something to the effect of “I am not going through this shit” and decided to leave the scene where the officers were stopping him, PO Louis followed § 87(2)(b) and grabbed him. Because PO Scantlebury and PO Louis observed § 87(2)(b) violating penal law 240.20 subsection 5 and then subsection 3 of the same penal law code, obscene language in public (see **enclosure 1a**), they had the right to detain § 87(2)(b) until they could issue a summons (see **enclosure 1b**). Following that, § 87(2)(b) alleged that PO Louis pushed him against a wall and was trying to get his arms behind his back, effectively wrestling with § 87(2)(b). As § 87(2)(b) admitted that he was resisting these actions by PO Louis, it was therefore permissible for PO Louis to use some amount of force to overcome resistance and by § 87(2)(b)'s own statement it was the minimal amount of force necessary to achieve compliance.

After PO Louis detained § 87(2)(b) inside of § 87(2)(b) and was wrestling with him, § 87(2)(b) alleged that PO Scantlebury, who followed PO Louis into the building, was punching § 87(2)(b) in the ribs. § 87(2)(b) however, alleged that PO Louis and PO Scantlebury were kicking and punching § 87(2)(b) in the legs and the back as he was hunched down in the corner. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C: Force: PO Maurice Fyffe used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.**

§ 87(2)(b) alleged that all three officers entered § 87(2)(b) and that PO Fyffe was one of the officers punching him in the ribs. Although, by § 87(2)(b)'s account, there were only two officers inside of the building and in physical contact with § 87(2)(b) and by all of the officers' statements, these two officers were PO Louis and PO Scantlebury. § 87(2)(g)

**Allegation D: Force: PO Andy Scantlebury used pepper spray against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.**

As the officers were struggling with § 87(2)(b) inside of § 87(2)(b) he alleged that one of the officers pepper sprayed him. § 87(2)(b) stated that it was PO Scantlebury who pepper sprayed § 87(2)(b) and this identification was supported partially by PO Scantlebury admitting to showing his can of pepper spray to § 87(2)(b) during the struggle. § 87(2)(g)

**Allegation E: Force: PO Clifford Louis used physical force against § 87(2)(b) inside of § 87(2)(b) in Brooklyn.**

**Allegation F: Discourtesy: PO Clifford Louis spoke obscenely towards § 87(2)(b) in front of § 87(2)(b) in Brooklyn.**

After § 87(2)(b) was handcuffed, PO Louis allegedly elbowed him in the side. Then after § 87(2)(b) was inside of the officers' patrol car to be transported to the 79<sup>th</sup> Precinct stationhouse, PO Louis allegedly told him, "Fuck your mother" and elbowed § 87(2)(b) again. § 87(2)(g)

**Allegation G: Abuse of Authority: PO Maurice Fyffe strip-searched § 87(2)(b) at the 79<sup>th</sup> Precinct stationhouse.**

PO Fyffe admitted unhesitatingly to searching § 87(2)(b) at the 79<sup>th</sup> Precinct stationhouse without a supervisor's authority by removing § 87(2)(b)'s pants and shoes. The removal of § 87(2)(b)'s pants technically constitutes a strip-search according to NYPD Patrol Guide procedure 208-05 (see enclosures 1c-1d). According to Barry Kamins, a strip-search cannot be conducted as a routine procedure pursuant to an arrest for a misdemeanor or violation without reasonable suspicion that the individual is concealing drugs or a weapon. But, Kamins does go on to state that "a number of cases (where there is an arrest on felony charges) have held that the nature of the arrest itself provides the justification for a strip search." However, the foot note to this passage indicates that the cases referred to involve felony drug charges (see enclosures 1e-1f). § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: